IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

1. Shree Niwas Soni Jan sewa Nidhi & ors v Bhagwati Devi & Ors.
   (S. B. Civil Misc. Appeal No. 253/2005)

2. Jugal Kishore & Ors v Bhagwati Devi & Ors.
   (S. B. Civil Misc. Appeal No. 1026/2005)

Date of Judgment: 24th April 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. S. N. Shah for the appellants.
Mr. Raunak Singhvi for the Respondents.

(Per Court):

Arising from the same factual matrix and from the same impugned order, namely order dated 28-9-2004 passed by the Additional District Judge, No. 1, Sikar these two appeals are being decided by this common judgment. Through the impugned order, the learned judge has allowed the temporary injunction application filed by the plaintiffs. For the sake of clarity, the facts are being taken from the second appeal, namely S. B. Civil Misc. Appeal No. 1026/2005. Also for the sake of clarity, the parties shall be referred to as they are

addressed to in the original suit.

The brief facts of the case are that one Ganeshi Das had two sons, namely Ram Kumar and Ram Pratap. Allegedly in 1957, the two brothers, Ram Kumar and Ram Pratap separated. the plaintiff Nos. 1, 2 and 3, namely Smt. Bhagwati Devi, Vineet Kumar and Pradeep Kumar, respectively and the defendant Nos. 1 to 7, namely Jugal Kishore, Chandra Mohan, Mohan Lal, Kanta Prasad, Krishan Gopal, Anil Kumar, and Smt. Savitri Devi are the descendents of one Ram Kumar. Since there has not been any partition amongst the different descendants of Ram Kumar, the plaintiffs filed suit for partition of the ancestral property by meets and bounds. Along with their suit, they also filed an application under Order 39, Rules 1 and 2 of the Civil Procedure Code (‘the Code’, for short). The plaintiffs claimed that defendants Nos. 1 to 7 have started claiming the ancestral property as theirs and have started materially altering it and disposing it without the consent of the plaintiffs. According to them, the defendants Nos 1 to 7 have sold the “Nohara” (a open spaced compound) to the defendants

Nos. 9 to 15. The defendant Nos. 9 to 15 are intending to raise constructions on the Nohara. In fact, defendant No. 16 is planning to carve out plots out of the Nohara and to sell the same to third parties.

The defendants Nos. 1 to 7 in their written statements claimed that although the family tree given in the plaint is correct, but some of the female relatives who are also necessary parties to the suit have been left out. Therefore, the said suit should be dismissed for non-joinder of necessary parties. They further pleaded that Plaintiff Nos. 1 and 2 are the wife and son of Radheyshyam, the eldest son of Ram Kumar. On the other hand, Plaintiff No. 3 and Defendant No. 4 are the sons of Ram Kumar's second son, Vishwanath. However, both the sons of Ram Kumar, namely Radheyshyam and Vishwananth had separated from the joint family and had taken their share of the joint family property in 1957 itself. Therefore, the Plaintiff Nos. 1 to 3 and defendant No. 4 are not entitled to seek any partition of the ancestral property. Further, the property in dispute rightfully belongs to the defendant Nos. 1 to

3 and 5 to 8. They have, thus, validly sold part of the property, “the Nohara” to the defendant Nos. 9 to 15.

The defendants Nos. 9 to 15 claimed that they have bought the Nohara through an agreement. They further claimed that they purchased the said Nohara after paying due consideration at the market rate and obtained the possession thereof. They further claimed that they have purchased the Nohara in order to construct a guest house for the convenience of the general public and have obtained the water connection and have gotten the plans for the guest house approved from the appropriate authority.

However, after hearing all the parties, the learned Judge passed the impugned order as aforementioned. Aggrieved by the said order, on the one hand the defendants Nos. 1 to 8 have filed the second appeal; the defendants Nos. 9 to 15, the buyers of the Nohara have filed the first appeal before this court.

We do not propose to go into the merits of the case. For, our observations may adversely affect the decision of the learned trial court. Suffice it to say that the learned Judge has meticulously examined the evidence to reach the conclusion that the plaintiffs have a strong prima facie case in their favor, that the balance of convenience is also in their favor and they would suffer irreparable loss in case the temporary injunction is not granted in their favor.

The case deals with a dispute over the ancestral property. The issue whether Radheyshyam and Vishwanath had separated from the joint family and had taken their share of the property, as claimed by the defendant Nos. 1 to 3 and 5 to 8 is a matter of evidence. Likewise, the issue whether the defendant Nos. 9 to 15 have validly bought the Nohara, whether an agreement to sell would entitle them to raise construction in the place of the Nohara are also issues to be decided after recording to evidence. Thus, at the initial stage of considering the temporary injunction application, the learned Judge was justified in preventing the alienation of the property

and in maintaining the status quo.

However, as the civil suit would take a long time for completion, it would be in the interest of justice to permit the defendant Nos. 1 to 15 to whitewash and to carry out minor repair works for the maintenance of their respective portions. But it is clarified that this order should not be used to damage, destroy or to materially alter the structure of the property. The defendant Nos. 9 to 15 are not allowed to raise construction in accordance with the approved plans, as that may change the nature of the property. All the defendants are further prevented from selling, mortgaging, transferring or alienating the property during the course of the proceedings. To this limited extent the impugned order dated 28-9-04 stands modified. Since the case has been hanging fire for last three years, the learned Judge is directed to decide the case expeditiously. With these observations, these appeals are disposed of. There shall be no order as to costs.

R. S. Chauhan J.